

**COMMISSION MEETING  
THURSDAY, NOVEMBER 15, 2007  
MINUTES**

**Chair Niemi** called the meeting to order at 1:40 p.m. at the Double Tree Guest Suites located in Southcenter. She then introduced the following members and staff present, noting that Commissioners Parker and Ellis were doing well and planned to be at the January meeting.

**MEMBERS PRESENT:**   **COMMISSIONER JANICE NIEMI, Chair**, Seattle  
                                  **COMMISSIONER PEGGY ANN BIERBAUM**, Vice-Chair, Quilcene  
                                  **COMMISSIONER KEVEN ROJECKI**, Tacoma  
                                  **SENATOR MARGARITA PRENTICE**, Seattle

**STAFF PRESENT:**       **RICK DAY**, Director  
                                  **MARK HARRIS**, Assistant Director – Field Operations  
                                  **DAVID TRUJILLO**, Assistant Director – Licensing Operations  
                                  **AMY HUNTER**, Administrator – Communications & Legal  
                                  **JERRY ACKERMAN**, Assistant Attorney General  
                                  **GAIL GRATE**, Executive Assistant

**Director Day** explained the Agency Partnership Program and introduced participants Julie Owen, secretary for Communications and Legal Division, and Jennifer Stretch, Agency receptionist.

**1.     Review of Agenda and Director's Report**

**Director Day** reviewed the agenda for Thursday and Friday and noted there were no staff recommended changes. The Chair had requested a short executive session of just the three Commissioners to be held Friday at 9:00 a.m. Director Day noted that the Commercial Study Session would be held Friday morning from 8:00 a.m. to 9:00 a.m. (a change from what is normally done).

**Visiting Dignitaries**

**Director Day** shared that on November 9 dignitaries from the Norwegian Ministry of Culture and Churches and the Danish Gaming Commission visited the Agency. The dignitaries were here on a fact finding meeting regarding the Commission and its regulatory enforcement activities, specifically those activities relating to internet gambling.

**Betcha.com Ruling**

**Director Day** advised of the favorable ruling by the Thurston County Court that the plaintiff's internet gambling operation violates provisions of RCW 9.46. The judge found that Betcha.com are not players and that they created, possessed, and used gambling records in violation of the law. In the end, the judge ordered the State's cross motion for Summary Judgment and denied the plaintiff's motion for Summary Judgment

against the State and the State Gambling Commission, and dismissed the case with prejudice. Director Day said it was a very significant decision and ruling, and recognized Jerry Ackerman and Bruce Marvin for their work on the case.

### **Employee Survey**

**Director Day** drew attention to the information provided in the agenda packet on the annual employee survey.

### **Diversity Plan (PowerPoint Presentation)**

**Terry Westhoff, Administrator**, presented the Agency's proposed new Diversity Plan and asked for approval of the plan. The agency's first formal Diversity Plan was initiated in January of 2004. This plan set an initial course for the agency to address diversity as both a value and a goal of the agency. The current plan needs to be updated because all the projects listed in that plan were completed. The initial plan focused on what diversity meant to the Agency and how we would assess our climate. Staff has been provided training and with this Diversity Audit it is time to update the plan and move to the next phase, which is to integrate diversity into how Agency business is conducted on a day-to-day basis. Key recommendations of the Diversity Audit were to establish how diversity fits into the Agency's strategic goals and objectives, find ways to measure diversity and our success with regard to diversity, and have more tangible expectations for employees with regard to meeting these goals, objectives, and measures. Instead of treating diversity as a separate issue when diversity training or events occur, staff felt it was best to make the Diversity Plan complimentary to the Strategic Plan, and to focus on goals, objectives, strategies, and measures for diversity. The Strategic Plan is reviewed every two years, so it is appropriate to look at the Diversity Plan every two years to keep it in line with the Strategic Plan. Three areas of strategic focus are recruitment, retention, and training and awareness. All our employees will have diversity-related training at least once per year. Information is provided on diversity-related laws, policies, and directives, and how to access available resources. The reports and statistics are to be maintained by our Human Resources Division to help ensure our success and to track important information. .

**Commissioner Bierbaum** commented that the plan is great and she appreciates the time spent on it. Commissioner Bierbaum noted that one of the measures of success and retention was the percentage of employees in the agency that are from unrepresented groups. Your target is for the percentage of Gambling Commission employees and unrepresented groups to exceed the statewide agency average. Commissioner Bierbaum felt that just means we will get a C, we will do as good as any other state agency and that will be good enough for us. The Gambling Commission should say it is going to do what is available in Washington State Commissioner Bierbaum would have preferred to have it reflect the definition of an unrepresented group, which is that they are represented in the agency to the level which they represent availability in Washington State. **Mr. Westhoff** responded that with performance measures, you start somewhere and see where they go. As staff looked at where to start on these performance measures, it was felt the performance measures were something the Agency is already measuring. As we go along, we may find that this measure is not challenging enough for our standards.

**Chair Niemi** agreed it is an excellent plan and felt the Agency should be able to meet whichever goal it decides to apply.

**Commissioner Rojecki** made a motion seconded by **Commissioner Bierbaum** to approve the Diversity Plan for January 2008 through December 2009, as presented by staff. **Vote taken; the motion passed unanimously.**

**Director Day** thanked the Commission for their observations and approval and noted that this plan was an employee created plan and thanked the agency team for their work. It was very well done.

**Small Business Economic Impact Statement (SBEIS)**

**Amy Hunter, Administrator**, summarized the current law concerning Small Business Economic Impact Statements, briefly explained the changes made in the 2007 Legislative session, and explained how staff is incorporating the Small Business Economic Impact Statements in our rule making process. The Regulatory Fairness Act is the state law that requires agencies to complete Small Business Economic Impact Statements, referred to as SBEIS's. The bill that was passed in 2007 is in the agenda packet. Pages 1 and 2 are a Legislative declaration intent section. The Act itself is to not have agencies passing rules without considering the impacts on small businesses and whether there is a way to respond to the impacts. An SBEIS is required when a rule would impose more than minor costs on small businesses, with some exceptions. A small business is defined as any business owned and operated independently from other businesses with 50 or fewer employees. Many of our pull-tab licensees have 50 or fewer employees.

Until the 2007 session, the term minor cost was not a defined term. Now minor costs are defined as a cost per business that is less than three-tenths of one percent of annual revenue or income, or \$100, whichever is greater, or 1 percent of annual payroll. If a rule would impose more than \$100 in costs for a small business to comply, an agency has to determine whether there are disproportionate impacts on small businesses and what the extent of those are. The law does not distinguish between rules that are proposed by staff versus petitions from members of the public. The Administrative Procedure Act lists seven types of rules that do not require an SBEIS. These are on the bottom of page 1 and the top of page 2 of the memorandum. If the rule contains requirements that are explicitly and specifically dictated by Statute, then an agency does not have to do an SBEIS. If it sets or adjusts fees pursuant to state law, addresses administrative hearings, or addresses applying to an agency for a license or permit, the agency does not need to do an SBEIS. If an SBEIS is required, it must address nine different areas, which are addressed in the memorandum.

Ms. Hunter explained how the Agency plans to incorporate SBEIS's into its rule making process. The Agency Rules Team is responsible for all of the rules and rule summaries that are provided each month, and are involved extensively in the rule process. The Rules Team consists of a cross section of employees that include field agents, licensing staff, the agency's rules coordinator, and a staff attorney from the legal division.

Assistant Directors Dave Trujillo and Mark Harris and Ms. Hunter rotate as part of the team to provide guidance and ideas. Given the expertise of the team, it makes sense for the Rules Team to decide whether an SBEIS needs to be done and to gather the necessary information. The team will seek input and assistance from other staff as needed. Some of the information needed is very detailed, so there will also be times when specific information will be requested from licensees. Staff recognizes that not all licensees impacted by rules can attend the Commission meetings, so the Rules Team sends notice letters to licensees informing them of possible changes.

An SBEIS was completed for the Minimum Bankroll Rule, but it was felt that an SBEIS was not needed for Mr. Kimmerle's petition to increase the hours of play at card rooms because the agency is not requiring a business to be open for more hours. Small Business Economic Impact Statements will be required to be filed with the paperwork that staff already files with the Code Reviser's office. Staff attempted to mirror what the Statute requires an SBEIS contain, but there is no specific format that is required if the Commissioners have suggestions on the format, please let us know.

### **Possible Agency Request Legislation**

**Director Day** pointed out that the Commissioners may recall that in support of the 2008-2009 budget, the Commission approved a plan to move forward with a series of revenue enhancements which included new and increased fees and also included two legislative proposals. One dealt with the 601 inflation factor limitations and the other one dealt with the potential for retaining the Commission's interest. As directed by the Commission, the staff has moved those two proposals forward; one with a supplemental budget and one is proposed legislation waiting for formal response from the Governor's office. However, in the meantime the Commission has before them a proposal to increase fees effective January of 2008. Staff prepared new revenue enhancements that would require new rules that were being planned on beginning in January for the rule making process for the Commission to formally consider. However, at this point the voters have approved Initiative 960, which deals with tax and fee increases. Absent any successful court challenge, at this point the agency appears to have to seek legislative approval of all of, or at least most of, the revenue enhancement package that we have been discussing. Given the uniqueness of our situation, the staff is requesting the Commission's approval to draft and identify the appropriate method to gain legislative approval of the package of revenue enhancements that are described on the memorandum from Amy Hunter. Because of the timing of the beginning of the legislative session and the effective date of I-960, which would be December 6 if it moves forward, we are limited in how we are able to draft things for presentation to the Commission. Staff would propose to be able to work with both the Office of Financial Management and interested Legislators and move forward some form of package that would have the legislature consider an increase of fees, which are being proposed for fiscal year 2008-2009. One new fee that we have been discussing is the fee for electronic gambling equipment that would basically expand the certification stamp that the Commission already uses. Also, being requested is a one year exemption from the fiscal growth factor to address those small fees where the

agency is not recovering its costs and the possibility of potentially restructuring the house-banked card room license fee schedule. The last item we would like the Commission to authorize us to discuss, if necessary, would be the potential if the agency is unable to move forward to at least request some discussion about a potential general fund transfer to mitigate the impact of not being able to impose some of these fees to increase revenues during the critical period coming up, which is the end of fiscal year 2008 and fiscal year 2009. In the agenda packet is a memorandum from the Office of Financial Management on implementation of I-960. Because OFM has no way of knowing all potential fee increases, staff will be setting up a notification process that allows agencies to insert fee proposals into the appropriate review and approval protocol. Director Day requested authorization from the Commissioners to seek legislative approval on the items listed on the memorandum from Ms. Hunter.

**Commissioner Bierbaum** made a motion seconded by **Commissioner Rojecki** to authorize agency staff to pursue agency request legislation to increase the fees as proposed and to establish fees that are part of our overall revenue package as set forth in the accompanying memorandum from Amy Hunter. *Vote taken; the motion passed unanimously.*

#### **NIGC Class II Proposed Regulations**

**Director Day** explained that for several years the National Indian Gaming Commission (NIGC) has been working on standards for Class II gambling machine standards. At present there is no specific standard regarding the federal approval of this kind of machine. The Commission has monitored this process from the start and has concerns regarding the proposed regulations. On October 24, NIGC published a new version of the Class II gambling rules. Included in the agenda packet is our letter to the National Indian Gaming Commission dated August 22, 2006, the federal proposal, and a draft of a proposed letter to the National Indian Gaming Commission. We are asking the Commissioners to authorize staff to send this letter, either under Director Day's signature or the Chair's signature, with any modifications the Commissioners would like. The rule comment period has been extended to January 24, so if the Commissioners feel the need for more time to deliberate on this, staff could continue to work on any recommended modifications and bring this back at the January meeting.

The Gambling Commission has a continuing interest in ensuring electronic gambling devices referred to as Class II are not actually Class III gambling devices. Staff is concerned about the standard that would redefine an electronic facsimile. Anything that is an electronic facsimile of a game under the Indian Gaming Regulatory Act (IGRA) is actually a Class III device. This proposal says that anything that is defined under these rules the NIGC has made can actually be considered as not an electronic facsimile, which potentially could exempt a lot of things from the Johnson Act and may open the door more broadly to electronic gambling devices as long as the devices could be considered under this chapter. That is new from the rules that were proposed in 2006. The other section staff is concerned about is that the rules would allow a determination of a winner on one drop or one release of numbers. Staff do not believe a bingo game can end after a

single set of numbers on a card, and feel this type of game cannot for any practical purpose be distinguished from a slot machine.

The Agency wants to conclude that it remains committed to a strong partnership with tribal governments that choose to engage in Class III gambling under IGRA; however, Class II machine gambling conducted under the currently proposed NIGC rules could have the potential to negatively impact the State's existing cooperative regulatory relationship with the federally recognized tribes in the state of Washington.

**Commissioner Bierbaum** noted there was a typo in the second paragraph of the letter. There is an ending quotation mark but no beginning, which could change the entire impact of the letter.

**Chair Niemi** said she would like to know what our tribes and non-native American gambling people think about this. The Gambling Commission is saying this appears to be a slot machine, but everywhere in the country, there are slot machines. Chair Niemi would also like to know whether Director Day thought this proposal was going to pass or not. Staff must have some sense of whether or not the U.S. Legislature wants it and whether they will do this no matter what the Commission says. **Director Day** explained these regulations are proposed by the National Indian Gaming Commission. **Chair Niemi** asked if the local tribes are in favor of this. **Director Day** responded it was his understanding they are not in favor of these rules. **Chair Niemi** asked why. **Director Day** responded he was probably not the appropriate person to comment on why the tribes are not in favor of the rules. **Chair Niemi** asked whether the Commission was going to hear from the tribes; could a letter from the tribes be included, which would be much stronger. **Director Day** responded that he thought the tribes have a different perspective. The Commission's letter is more directed to the regulatory concerns and attempting to keep Class II games as bingo. Director Day believed the tribe's concerns would be more about the federal control aspect and how extensive it should or should not be. **Chair Niemi** asked how this would affect the non-tribal gaming. **Director Day** advised it would not affect non-tribal gambling. **Chair Niemi** asked if it would affect the type of machines that the Commission may not approve. **Director Day** answered that it would not. It is staff's understanding from the NIGC and anything published by the Chairman that they feel it is extremely important to follow through and establish standards. At least from that information, it appears that they intend to pursue to adopt standards. It is unsure how much significance the NIGC will give to the states' concerns, but it is important for us to forewarn the federal government about what our agency feels may be some of the consequences or the regulatory problems relative to these rules.

**Assistant Attorney General Jerry Ackerman** commented that, in general, he constantly cautions that all tribes are independent sovereign nations and it is very hard to generalize about what the view of the tribes may be. What Mr. Ackerman has seen in connection with these proposed rules is media comments attributed to individual tribes objecting to these rules for reasons that are completely different from what has been articulated by Director Day. Obviously, this letter addresses regulatory concerns that this agency may

have with the proposed rules. And again, the media reports which have to be taken with a grain of salt, have indicated that some of the tribes around the country feel these rules are perhaps too restrictive and they would like to see something that provides them with more latitude than these rules do. It is important to remember that these are rules; there will be no congressional hearing on the rules, per se. Obviously, if the NIGC did something that Congress could not live with, it has the power to change the Indian Gaming Regulatory Act or other statutes to address whatever it feels needs to be addressed. One thing that is important to remember in a practical way is that the Commission will not meet until January, and the rule making comment period for these rules has already been extended to January and may close before the Commission gets a chance to be heard unless some mechanism for deciding this prior to January is provided.

**Chair Niemi** said she had no problems with taking the advice of staff and signing this letter or have the Director sign this letter. **Commissioner Bierbaum** asked if these proposed rules would broaden or lessen the types of Class II machines that are authorized. **Director Day** responded that staff's opinion was that it would broaden them; although, some restrictions that would change may be viewed as more restrictive. Director Day accepted Mr. Ackerman's clarification, noting that he was not attempting to speak for the tribes, or that he had received any direct communication.

**Senator Prentice** commented that, obviously she cannot speak for them either, but it appeared to her that our Commission had been represented in Washington D.C. when these were first being discussed. Technology has gotten so far ahead of anything the Commission is regulating that our words are not adequate. Senator Prentice knew there was some major concerns by the tribes that because they were able to have Class II without our regulation, they felt we were pulling them back. Senator Prentice felt the bureaucrats need to know where the line is so they know what it is they are regulating. But she did not see that they were doing any better than we were. Senator Prentice thought that whatever they come out with, it is so unclear that somebody is going to be unhappy, or possibly everybody. And at least our Commission was there being represented. Senator Prentice said what we need to have some computer whiz to tell us what is going to be happen because we are going to be struggling with this for quite awhile in one direction or another.

**Commissioner Rojecki** made a motion seconded by **Commissioner Bierbaum** to send the letter to the National Indian Gaming Commission, as corrected. ***Vote taken; the motion passed unanimously.***

### **Correspondence**

**Director Day** drew attention to the first item of correspondence. Staff has been working with a group of licensees regarding our structure and process regarding imposition of penalties, and has been exchanging proposals on how to improve that process and provide some clarity to it. We are starting to come close to some agreement on what rules might help improve that process. Review and comments from Jerry Ackerman are still needed, but Director Day wanted the Commissioners to be aware we are moving forward with

discussions and are coming to some agreement. Director Day pointed out the memo from Assistant Director Harris reporting that gambling agents performed compliance inspections on underage gambling at various locations in Eastern Washington and all of the locations passed the compliance inspection and did not allow an underage person to gamble.

#### **Monthly Updates/News Articles**

**Director Day** briefly reviewed the Administrative Case Update, the Seizure Update, the Federal Update, and the News Articles.

**Chair Niemi** called for public comments. There was none.

#### **2. Qualification/Program Review – Seattle Jaycees - Seattle**

**Special Agent Ira Harte** provided a brief history of the Seattle Jaycees and their involvement in the community. Based on the onsite review and analysis of the financial statements, narrative, and supplemental information provided by the organization, the Seattle Jaycees is in compliance with all requirements set forth in its bylaws and is actively engaged in providing services that directly relate to its stated purpose. In addition the organization has made significant progress toward accomplishing its stated purpose. Staff recommends the Seattle Jaycees continue to be certified to conduct gambling activities in the state of Washington as a nonprofit organization.

**Commissioner Bierbaum** noted the financial statement shows they had a deficit of \$297,000 in 2006. **Agent Harte** explained that the number actually means they are in compliance by utilizing all of their funds toward their stated purpose. If the number were more than zero the organization would have excessive reserves and would not be in compliance.

**Chair Niemi** asked if there were representatives from Seattle Jaycees present.

**Ms. Crystal German, President-elect for the Seattle Junior Chamber for 2008** introduced Jill Griffin, President for 2006, and who is also the President for our Washington Jaycees.

**Ms. Jill Griffin** responded to the question regarding the spending of money in 2006. The organization spent money from its endowment fund as instructed to do. The endowment fund had to be redone and re-approved. The organization was told to spend more money on programming in those areas, which is where the additional income that was spent that was not made in 2006 came from.

**Commissioner Rojecki** made a motion seconded by **Commissioner Bierbaum** that Seattle Jaycees continue to be certified to conduct gambling activities in the state of Washington as a nonprofit organization. *Vote taken; the motion passed unanimously.*

3. **New Licenses and Tribal Certifications**

**Assistant Director Trujillo** reported that staff recommends approving the new licenses and Class III certifications listed on pages 1 through 21.

**Commissioner Bierbaum** made a motion seconded by **Commissioner Rojecki** to approve the list of new licenses, changes, and tribal certifications as listed on pages 1-21. **Vote taken; the motion passed unanimously.**

4. **Petition for Review**

***Golden Pheasant Café & Lounge, Shelton, Revocation***

**Assistant Attorney General Bruce Marvin** was present for the State, as well as **Petitioner Bonnie Ells**, owner of the Golden Pheasant. Ms. Ells and Mr. Marvin provided their testimony in the matter for review. A recording and transcript of the hearing is available upon request.

At the conclusion of the testimony (3:20 p.m.), **Chair Niemi** asked if there were any questions and called for an executive session to deliberate the matter; she recalled the public meeting at 3:30 p.m.

**Commissioner Bierbaum** made a motion seconded by **Commissioner Rojecki** that the Commission deny the Petition for Review submitted by the Golden Pheasant and issue a final order adopting the ALJ's initial order in its entirety. **Vote taken; the motion passed unanimously.**

5. **Petition for Review**

***Ryan S. Daniels, Card room Employee, Revocation***

**Assistant Attorney General Bruce Marvin** was present for the State, as well as **Petitioner Ryan S. Daniels**. Mr. Daniels and Mr. Marvin provided their testimony in the matter for review. A recording and transcript of the hearing is available upon request.

At the conclusion of the testimony (3:40 p.m.), **Chair Niemi** asked if there were any questions and called for an executive session to deliberate the matter; she recalled the public meeting at 3:50 p.m.

**Commissioner Bierbaum** made a motion seconded by **Commissioner Rojecki** that the Commission uphold the decision of the Administrative Law Judge revoking the license of Mr. Daniels. **Vote taken; the motion passed unanimously.**

6. **Other Business/General Discussion/Comments from the Public**

**Chair Niemi** called for other public comment. There was none.

At 3:55 p.m. **Chair Niemi** called for an Executive Session to discuss pending investigations, tribal negotiations, and litigations. She called the public meeting back to order at 4:35 p.m. and immediately adjourned.

**COMMISSION MEETING  
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DRAFT MINUTES**

**MEMBERS PRESENT:** **COMMISSIONER JANICE NIEMI**, Chair, Seattle  
**COMMISSIONER PEGGY ANN BIERBAUM**, Vice-Chair, Quilcene  
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**STAFF PRESENT:** **RICK DAY**, Director  
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**DAVID TRUJILLO**, Assistant Director – Licensing Operations  
**AMY HUNTER**, Administrator – Communications & Legal  
**JERRY ACKERMAN**, Assistant Attorney General  
**GAIL GRATE**, Executive Assistant

**Chair Niemi** called the meeting to order at 9:40 a.m. at the Double Tree Guest Suites located in Southcenter.

**7. Approval of Minutes – Regular Meeting, October 11-12, 2007**

**Commissioner Bierbaum** made a motion seconded by **Commissioner Rojecki** to approve the minutes of the October 11-12, 2007, regular commission meeting. *Vote taken; the motion passed unanimously.*

**Rules Up for Final Action**

**8. Cashier's Minimum Bankroll for House-Banked Card Rooms**

**Amended Section WAC 230-15-050** – Minimum cash on hand requirements.

**Assistant Director Mark Harris** reported this is a staff proposed rule change that will require house-banked card room licensees to maintain a minimum amount of cash in the cage before opening a business day. The minimum cash requirement will help ensure funds are available to pay out prizes and will require house-banked card rooms to have at least \$1,000 per table they are licensed to operate, plus the highest prize available, which would be capped at \$20,000. The current rule states that they must maintain a sufficient amount of cash on hand, which is a very subjective interpretation. Both Nevada and New Jersey have similar rules.

At the Commission meeting study sessions, industry has supported this rule change. Staff recommends approving the rule change with an effective date of January 1, 2008.

**Chair Niemi** called for public comments.

**Mr. Chris Kealy**, Iron Horse Casino and also the Recreational Gaming Association (RGA) testified in his capacity as the Vice President of the RGA that they were 100 percent supportive of this rule change because it makes gaming more reliable and protects the public.

**Commissioner Bierbaum** made a motion seconded by **Commissioner Rojecki** to adopt Amended Section of WAC 230-15-050 as proposed by the staff. **Vote taken; the motion passed unanimously.**

**9. License and ID Stamp Fee Increase**

**Proposed Amendment to:**

WAC 230-04-202 Fees-Bona fide charitable/non-profit organizations.

WAC 230-04-203 Fees-Commercial stimulant and other business organizations.

WAC 230-04-204 Fees-Individuals.

WAC 230-08-017 Control of gambling equipment-use of identification and inspection services stamps.

**Companion Rules Simplification Project Rules:**

WAC 230-05-020 Charitable or non-profit organization fees.

WAC 230-05-025 Commercial stimulant fees.

WAC 230-05-030 Fees for other businesses.

WAC 230-05-035 Individual license fees.

**Assistant Director David Trujillo** reported that staff is asking the Commissioners to take action on Amendatory Sections WAC 230-05-020, WAC 230-05-025, WAC 230-05-030, and WAC 230-05-035, which has to do with fee increases. The proposed rule will increase license fees by approximately 5.5 percent, which is consistent with limitations of Initiative 601 and the Fiscal Growth Factor. Staff has not received any written opposition to these proposed rules and asks that final action be approved on these proposed rule amendments today, even though Initiative 960 may make such fee increases not effective. Since this fee increase was part of the Director's budget discussion last year and staff started moving forward with this fee increase many months ago, it is still necessary for the Commission to take action today. Staff recommends adoption of the rules with an effective date of January 1, 2008, with the understanding that Initiative 960 would likely be effective December 7.

**Chair Niemi** asked if there were any questions from the audience. There were none.

**Commissioner Bierbaum** made a motion seconded by **Commissioner Rojecki** that the Commission adopt WACs 230-05-020, 230-05-025, 230-05-030, and 230-05-035 with an effective date of January 1, 2008. **Vote taken; the motion passed unanimously.**

**Ms. Amy Hunter** asked for clarification that the motion would include not adopting the amendatory rules for WACs 230-02-202, 230-02-203, 230-02-204, and 230-08-017 to make the filing with the Code Reviser's office a bit clearer.

Commissioner Bierbaum confirmed that her motion included not adopting WACs 230-02-02, 230-02-03, 230-02-04, and 230-08-017 and Commissioner Rojecki seconded.

**10. Rules Simplification Project – Tribal Casinos**

**Repealed Chapter WA 230-48** – Tribal casinos.

**Ms. Hunter** reported that staff sent an email message to the tribes a couple of months ago to make them aware of this rule repeal and did not receive any responses, so staff would recommend final action with an effective date of January 1, 2008.

**Chair Niemi** asked if there were any questions on this. There were none.

Commissioner Rojecki made a motion seconded by Commissioner Bierbaum that the Commission repeal WAC 230-48 with an effective date of January 1, 2008. *Vote taken; the motion passed unanimously.*

**11. Repealer of Current Rules Manual**

WAC 230-02 General provisions and definitions.

WAC 230-04 Licensing.

WAC 230-08 Records and reports.

WAC 230-12 Rules of general applicability.

WAC 230-20 Bingo, raffles and amusement games.

WAC 230-25 Fund raising events.

WAC 230-30 Punchboards and pull-tabs.

WAC 230-40 Card games.

WAC 230-46 Unlicensed activities.

WAC 230-50 Hearings – Practice and procedure.

WAC 230-60 Public records – Disclosure.

**Ms. Hunter** reported that this section repeals all of the non-RSP Chapters with the exception of WAC 230-48, which was just repealed. Staff would recommend final action with an effective date of January 1, 2008.

**Chair Niemi** asked if there were any questions or comments. There were none.

Commissioner Rojecki made a motion seconded by Commissioner Bierbaum that the Commission repeal WACs 230-02, 230-04, 230-08, 230-12, 230-20, 230-25, 230-30, 230-40, 230-46, 230-50, and 230-60 with an effective date of January 1, 2008. *Vote taken; the motion passed unanimously.*

## **Rule Up for Discussion**

**12. Electronic Video Pull-Tab Dispensers**

a) **Amendatory Section WAC 230-14-045** – Authorized pull-tab dispensers.

b) **Amendatory Section WAC 230-14-045** – Fees for other businesses.

### ***Alternative #1***

c) **New Section WAC 230-14-047** – Additional requirements for authorized electronic video pull-tab dispensers.

d) **New Section WAC 230-06-002** – Defining “cash”.

**Assistant Director Trujillo** reported there were two new sections added which were not presented at the October Commission meeting - Alternative 1, WAC 230-14-047, and WAC 230-06-002.

Items 12 a) and b) were presented at the September Commission meeting and held over to October. In the initial rule proposals, these two rules would have prohibited the use of two electronic video pull-tab dispensers currently being operated in the state. To date over 30 written statements have been received opposing these amendments, plus a great deal of testimony was heard at the September and October Commission meetings opposing these amendments as well. These rules were filed for discussion at the October Commission meeting and the Commissioners asked staff to work directly with the industry to come up with an alternative. Alternative #1 accomplishes three purposes: (1) It creates a rule that speaks directly to standards for electronic video pull-tab dispensers, which would expressly allow Gold Crown or VIP type dispensers if they meet these standards; (2) It incorporates a prior decision to allow gift cards and gift certificates to be used for the purchase of pull-tabs by writing into this rule that gift cards and gift certificates may be used in electronic video pull-tab dispensers; and (3) It creates a definition for cash, because staff has identified a need for a modification to the definition of cash. Also included in the agenda packet on blue paper is Alternative #2, which was submitted by industry representatives. If there are any questions about Alternative #2, Jay Gerow and Joan Mell are present to answer those questions.

**Chair Niemi** said it was her understanding that the Commissioners were to decide whether or not to file either one of these or both of them. **Assistant Director Trujillo** affirmed, adding if he understood correctly, the Commissioners can file Alternative #1 with the two new sections, or file Alternative #2, or file both Alternatives for discussion.

**Chair Niemi** called for public comment.

**Mr. Jay Gerow**, ZDI Gaming, asked the Commission to file Alternative #2, which was their proposal and is more in line with what we felt was being asked for at the Spokane meeting last month. It is a more complete package with regards to accounting and accountability than Alternative #1.

**Mr. Chris Kealy**, Iron Horse Casino in Auburn and Everett, testified he was also in favor of Alternative #2 being filed for final adoption. Mr. Kealy noted he had an additional concern that did not show up on Alternative #2 that he may bring forward next month, which would add language that guarantees or ensures these products would not be in the line of sight of children. Mr. Kealy stated he was against kids looking at machines and gaming and alcohol and felt it should be restricted to a minor-only application.

**Commissioner Rojecki** asked whether the only change between the two alternatives is section 3.d) and wiping out the new section on the bottom. **Assistant Director Trujillo** affirmed that was correct. **AAG Ackerman** asked whether he was correct that the tan paper is an alternative that staff has put forward after talking with the industry and that staff would be willing to support the alternative that is on tan paper. **Assistant Director Trujillo** replied that staff would recommend at least filing Alternative #1, which is on the yellow paper. **AAG Ackerman** asked for clarification on Alternative #2 that is on the blue paper - staff does not currently support the additional changes that were made, but it has been put forward as something the Commission could file for further discussion and could adopt if they chose to do so, but this is not currently an alternative that staff supports. **Assistant Director Trujillo** affirmed that would be correct.

**Chair Niemi** asked whether Alternative #1 leaves these dispensers and is the status quo - that no one is taking them away. **AAG Ackerman** affirmed that Alternative #1 is the status quo.

**Ms. Joan Mell** on behalf of ZDI Gaming, testified with respect to the last clarification for the record, stakeholders have tried to get involved in staff discussions about preparation of a rule on the pull-tab dispensing equipment. None of the changes on the buff colored document reflect any meaningful discussion over the backend use of cash card technology as a limited cashier function. We were advised by staff that they would make no comment either in favor or in opposition of the use of cash card technology for limited cashier function. It has always been admitted by staff that it improves regulatory control. So for staff to be representing that they object to the rule is inconsistent with the discussions we have had with staff. The other comment would be that cash is new, that defining cash would be a whole new concept from anything that exists with pull-tab equipment.

**Commissioner Bierbaum** commented that if Alternative #1 just maintains the status quo, does it even need to be filed. Commissioner Bierbaum said her view has always been that things are better discussed and that it would have to have some compelling reason not to approve something for filing.

**Commissioner Bierbaum** made a motion seconded by **Commissioner Rojecki** that the Commission accept for filing Alternative #2. ***Vote taken; the motion passed unanimously.***

**Commissioner Rojecki** made a motion seconded by **Commissioner Bierbaum** that the Commission accept for filing Alternative #1. ***Vote taken; the motion passed unanimously.***

## Rules Up for Discussion and Possible Filing

### 13. Petition for Rule Change – Increasing Card Room Hours of Operation

**Amendatory Section WAC 230-15-025** – Hours of operation.

**Assistant Director Mark Harris** reported this is a petition for rule change submitted by Andrew Kimmerle, a poker player, asking the Commission to allow card rooms to use their premises to playing cards 24 hours a day for 5 days a week, and 20 hours a day for 2 days a week. Currently, card rooms are allowed to operate 20 hours a day, 7 days a week, and required to be closed between the hours of 2:00 a.m. to 6:00 a.m. unless approved by the agency for another four-hour block, after staff consult with the local law enforcement agencies. The four-hour closing requirement was maintained for a cool-off period for gamblers; however, card rooms are now so closely located that their hours are usually staggered to accommodate the players. Tribal casinos in Washington are authorized to operate 24 hours a day, 7 days a week, but even though not required, most tribal casinos are closed for two 4-hour blocks to do accounting, repairs, and maintenance. This rule change would cause a potential for card rooms to be open 20 more hours a week and may require additional staff time to ensure the card rooms are actually closing for the required two days. The ability to operate 24 hours a day, 5 days a week may also be perceived as an expansion of gambling. Staff recommends filing the petition for further discussion. Staff will be contacting local law enforcement agencies for feedback and will present it to the Commissioners at the January 2008 meeting. The petitioner requests that the change become effective 31 days from filing; however to be consistent with WAC 230-12-050, staff recommends an effective date of July 1, 2008. The petitioner is present to answer any questions.

**Mr. Andrew Kimmerle** testified he had explained everything in his letter he sent with the petition for rule change. Mr. Kimmerle noted that not everyone works 9:00 a.m. to 5:00 p.m., adding he had prepared the petition, which 328 people signed supporting the change. These are basically people who play poker, but Mr. Kimmerle was sure if he got signatures from the other people who play blackjack and pai gow, he would probably have about 4,000 names

**Mr. Chris Kealy**, Iron Horse Casino Auburn and Everett testified that on this particular proposal he heard staff say this change would require more staff time to verify that the card rooms were closed two days a week, but currently the agents need to verify the card rooms are closed for four hours, seven days a week. Mr. Kealy did not see that as more staff time, he thought it was less verification, not more. The gaming is going on anyway with the card rooms sitting next to each other alternating their hours. It is an operator's decision to shut down, and Mr. Kealy thought they likely would. Mr. Kealy is currently allowed to run 20 hours a day and he actually runs 17. The card rooms just make operating decisions based on the population, but with shifts operating 24/7, 365 days at the Boeing plant, there are a lot of back-shift workers whose Friday night or Saturday night is Wednesday morning at 3:00 a.m. Mr. Kealy said he had studied it when he owned Jimmy G's Casino in Tacoma and found there were 19,000 back-shift workers at

that time, and Mr. Kealy marketed specifically to them because he would have a group of nurses coming in for a birthday party at 6:00 a.m. because that was their Friday night.

**Chair Niemi** asked if this would require the card room to close two days a week. **Mr. Kealy** explained card rooms are currently required to close four hours every day, and this proposal would require card rooms to be closed two days a week for those four hours, instead of the current requirement of seven days a week for the four hours. **Chair Niemi** asked, 5 days for 24 hours and 2 days for 20 hours? **Mr. Kealy** affirmed 20 hours was the proposal.

**Senator Prentice** asked whether, in a practical sense, the card rooms would stop and vacuum and do that stuff anyway. **Mr. Kealy** replied that, as a practical matter, he agreed with Senator Prentice. Mr. Kealy doubted he would utilize this; although, he might utilize it in Auburn because he has a neighbor two miles away that operates 24 hours. Mr. Kealy stated he might utilize it there, but would probably use it less than this rule proposes. **Senator Prentice** commented that she recalled sitting at Freddie's Club having breakfast when suddenly everybody left and the staff started vacuuming the blinds and everything around you. So she just figured, okay, they have to do this or it would get pretty grubby. **Mr. Kealy** advised his restaurant in Auburn runs 24/7, 365 days because the demand is there for the coffee shop. And staffing wise, it is technically harder to close the place, so we run 24/7, 365 days and work around those logistics of cleaning and everything else. **Senator Prentice** added that smoking was still allowed when she was in there.

**Mr. Michael Marquess**, Macau Casino and Casino Caribbean, testified that he would use this just for poker because currently his card room hours are 11:00 a.m. to 7:00 a.m., but a lot of the poker games like to start earlier and we have to make the decision on whether we want to accommodate the table game players or the poker players. For example, a lot of the poker games like to start around 9:00 in the morning, or you can have tournaments a little bit earlier. And we cannot even start a tournament until 11:00. The only impact Mr. Marquess would see on his business is just the ability to allow the tournaments a little bit earlier and maybe a poker game to start at 9:00 instead of 11:00.

**Commissioner Rojecki** made a motion seconded by **Commissioner Bierbaum** that the Commission accept for filing Amendatory Section to WAC 230-15-025 to be effective July 1, 2008. ***Vote taken; the motion passed unanimously.***

**14. Petition for Rule Change – Pull-Tab Packing Requirements**

**a) Amendatory Section WAC 230-16-060 – Assembly and packaging of pull-tab series.**

**b) Amendatory Section WAC 240-14-260 – Inventory control.**

**Assistant Director Harris** reported that this is a petition for rule change from the Washington Charitable and Civic Gaming Association up for discussion and possible filing today. The petitioner is requesting that manufacturers be allowed to package pull-

tab series containing more than 10,000 tickets in multiple containers. The rule would also require additional security requirements on the packaging. In July of 2007, the Commission adopted a petition that increased the maximum number of tickets in a pull-tab series to 25,000. The current rule requires these games be packaged in one container, with the exception of progressive pull-tab games which can be packaged in multiple containers. We also allow manufacturers of bingo paper to package those separately in multiple packages.

The petitioner requests the rule change because the increased size and weight of the new authorized ticket games. An operator would need multiple packages to make it practical to handle. Mr. Harris brought a sample of a 24,000 count ticket game packaged in two boxes for illustrative purposes. The box is very, very heavy. With multiple packaging, there would be some possibility for increases in complexity of shipping - packages might get mixed up, which would be a concern of staff. Or if an operator only loaded one of the multiple boxes into a game, that might also be a concern because they are required to put the whole game out to play at once. These issues would probably be few in number because we do not see a high demand for that large of a game in a three ticket and a five ticket window game. The biggest concern would be the operators not putting the whole game out for play at once.

Additional staff time could be required to follow-up on quality control complaints, pull-tab complaints, modules and that type of follow-up if the games were not being put into play or they were mixed up. Staff recommends filing the petition for further discussion. And because the larger size games are now allowed, staff would recommend having the proposed rule up for final action at the July 2008 Commission meeting to be effective 31 days from adoption. The petitioner is present also, if you have any questions.

**Chair Niemi** called for public comment.

**Mr. Ric Newgard**, Washington Charitable Civic Gaming Association, apologized for bringing another rule change forward so closely after the previous two rule changes that the Commission granted in July. Mr. Newgard noted there is a rule in the manufacturing section, which requires the pull-tabs to be bundled in one box. Mr. Newgard pointed out that a lot of women work in our industry and there could be a problem with them lifting the boxes. Mr. Newgard thanked the Commission for granting him the opportunity to sell more pull-tabs in larger series, and explained the need of a mechanism to get them delivered. Mr. Newgard addressed the issue about putting the pull-tabs out. Gambling is a game of odds, so with a 25,000 series with a \$2,500 top prize, the operator is going to want all 25,000 tabs out there. If only half the series is put out, the player has a 1 in 12,500 chance of winning, but with all 25,000 tabs put out, that person has a 1 in 25,000 chance of winning. So it would behoove the operator to put all the tabs out.

**Commissioner Bierbaum** commented she was not sure she agreed with Mr. Newgard's math, but that is another story.

**Chair Niemi** asked if there were any questions. There were none

**Commissioner Bierbaum** made a motion seconded by **Commissioner Rojecki** that the Commission accept for filing Amendatory Sections to WAC 230-16-060 and WAC 230-14-260, as presented by staff. ***Vote taken; the motion passed unanimously.***

**15. Rules Simplification Project – Clean-up Package #2**

- a) **Amendment - WAC 230-07-140** – Minimum accounting records for Class D and above bingo.
- b) **New Rule - WAC 230-15-553** – Cash equivalent defined.
- c) **Amendment - WAC 230-06-125** – Renew your license in a timely manner.
- d) **Amendment - WAC 230-14-080** – Prize limits and percentage of winners required.
- e) **New Rule - WAC 230-06-007** – Canceling, changing time, date, or location of fund-raising events.
- f) **Amendment - WAC 230-14-120** – Permanently ~~removing~~ reserving punchboards or pull-tab series.
- g) **Amendment - WAC 230-16-015** – Punchboard and pull-tab sales restrictions.
- h) **New Rule - WAC 230-06-106** – Limited transfers of ownership allowed.
- i) **New Rule - WAC 230-06-107** – Ownership changes – allowed
- j) **New Rule - WAC 230-06-108** – Ownership changes – prohibited.
- k) **Amendment - WAC 230-10-350** – Recording bingo winners.
- l) **New Rule - WAC 230-06-007** – Licensed employees must wear nametags.
- m) **New Rule - WAC 230-03-018** – One annual change of bingo premises allowed.
- n) **New Rule - WAC 230-10-446** – Defining “linked bingo prize”.
- o) **New Rule - WAC 230-14-226** – Location of unplayed punchboards and pull-tab series.
- p) **New Rule - WAC 230-16-052** – Standards for flares.
- q) **New Rule - WAC 230-17-151** – Accumulating excessive reserves.

**Ms. Hunter** explained Clean-up Package #2 for the Rules Simplification Project is up for discussion and possible filing today and staff are requesting the package be up for final action at the January meeting, which will meet all of the Code Reviser’s filing requirements. Ms. Hunter reported that this packet includes 17 rules, noting that 13 of the rules were a result of performing a concordance review, which is a spreadsheet that compares where the rule was in the current Rules Manual with where it is in the RSP Manual to double check for any rule that may have been dropped in the process. Ms. Hunter briefly reviewed some of the items found during the review. The requirement for charitable and nonprofit organizations to maintain bank statements, related deposit slips, and canceled checks as part of the required accounting records, which was accidentally omitted in the RSP version, was added back to the rule. A rule interpretation that existed before the RSP began was included allowing banks to give customers an image replacement document. Other changes include adding the definition of cash equivalent back to Chapter 15, adding the words “at least” to WAC 230-06-125 and removing the word “new” from subsection 3.

Next are a couple rules incorporating petitions for rule changes that the Commission passed at previous meetings that dealt with cash prize limits for pull-tab games, and

allowing merchandise prizes. The rule dealing with fund raising events, sometimes called Reno Nights, was accidentally omitted and is being added back in. Page 16 is a title change only. Staff is recommending changing the word “removing” to “reserving.” Removing a game from play is very different than reserving a game. Reserving a game means that a player has played part of the game and wants to leave and then be able to come back and continue playing that game. The requirement prohibiting manufacturers from making sales promotions that the operators can somehow play out a game in a way that the operator is going to have to pay out fewer winners was added back in. The RSP intended to separate duties that dealt with the license and the ones that were post-licensing. These were split into three different rules. The first rule allows charitable and nonprofit organizations to transfer their licenses to another charitable organization if there is a merger or consolidation. The second rule changes the time frame to report ownership changes from 10 days to 30 days. The third rule adds when ownership changes are prohibited. Other changes include logging prizes that are less than \$20 on the prize receipt log, requiring employees to wear nametags, and requiring the nametag to include at least the employee’s first name. The rule regarding special property bingo licenses was changed to remove the requirement of a separate letter signed by the chief operating officer because the chief operating officer would already sign the application. Also the requirement about providing a detailed explanation of why the special location is being requested was removed. The definition of linked bingo prizes, which are discussed and allowed in the RSP Rules, was added to WAC 230-10-446. Two pull-tab rules were added to Chapter 16 that deal with where pull-tabs must be kept and the standards for flares. The last rule adds back in the requirement that organization not have excessive reserves.

**Chair Niemi** asked if there were any comments. There were none.

**Commissioner Bierbaum** made a motion seconded by **Commissioner Rojecki** that the Commission file for further discussion the Clean-up Package Number 2, as presented by staff. ***Vote taken; the motion passed unanimously.***

**16. Other Business/General Discussion/Comments From the Public/Adjournment**

**Chair Niemi** asked if there are any other comments from the public.

**Ms. Dolores Chiechi**, on behalf of the RGA members, thanked the staff for adjusting the informal study session to this morning. Ms. Chiechi said there would have been no one present yesterday, so the RGA appreciated being able to have that discussion today.

**Chair Niemi** noted there was one other item of business.

**Commissioner Bierbaum** made a motion seconded by **Commissioner Rojecki** that the Commission adjust the Director’s salary 3.2%, as a cost of living increase that was given to state employees, effective September 1, 2007. ***Vote taken; the motion passed unanimously.***

**Chair Niemi** asked if there were any comments.

**Senator Prentice** observed that the rest of government should do their regulatory reform the way the Commission does. Topics are discussed, and even though it sometimes seems like a lot of fireworks, the Commission discusses it and tries to flesh out some type of fairness and yet do what is the right thing. Senator Prentice said she has always marveled at the process, and this just reminded her again what a great process this is. Too bad we don't do more of this in government.

**Chair Niemi** adjourned the meeting at 10:35 a.m.

Minutes prepared by:

Gail Grate  
Executive Assistant